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Supreme Court of the United States

OCTOBER TERM, 1966

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No. 632

FUKAYA TRADING CO., S. A.,
Petitioner

versus

EASTERN MARINE CORPORATION,
Respondent

BRIEF IN OPPOSITION TO CERTIORARI

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The petition for certiorari is based on two propositions rejected after full consideration by the Court of Appeals:

a—After a vessel's arrival at the loading port specified in a previously executed, admittedly valid time-charter, her delivery to the charterer's strike-bound wharf was a condition precedent to the effectuality of the entire charter, preventing invocation of the arbitration clause to resolve a dispute over hire accruing during the strike.

b—The respondent shipowner, after formal demand for arbitration of the foregoing dispute, waived its right thereto by loading the vessel, under a reservation of rights, after the strike.

Petitioner cites no authority not cited to the Court of Appeals, nor does petitioner attempt to show any national or regional importance in the first question, much less the second.

While petitioner suggests that the first question is novel, the right to arbitration of a dispute over delivery of a vessel has been affirmed by the Second Circuit, in *In re Pahlberg Petition,* 131 F2d 968 (1942), and now, on the authority of *Pahlberg,* by the Fifth.*

The questions presented are characterized by inter-Circuit accord, not conflict.

It is respectfully submitted that the petition for certiorari should be denied.

Brunswick G. Deutsch,
Attorney for Respondent

William S. Stone,
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Of Counsel
October, 1966

* Accord: *In re Utility Oil Corporation,* 69 F2d 524 (CA 2-1934), cert. den., 292 US 655; *International Refugee Organization vs Republic S. S. Corp.,* 93 FS 798 (DC Md.-1950).